DOCUMENT RESUME

ED 405 779 HE 030 030

AUTHOR Buchanan, E. T. Joe
TITLE College and University Student Judicial Cases, Incidents, Materials: 1996.
PUB DATE Feb 97
NOTE 52p.; Paper presented at the Annual National Conference on Law and Higher Education (18th, Clearwater Beach, FL, February 13-16, 1997).
PUB TYPE Speeches/Conference Papers (150) -- Reference Materials - Bibliographies (131)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS Civil Liberties; Civil Rights; *College Students; *Court Litigation; *Criminal Law; Due Process; Educational Malpractice; Educational Responsibility; Higher Education; *Legal Problems; *Legal Responsibility; Student College Relationship; Student Rights

ABSTRACT

This paper presents campus crime statistics for 1993 and 1994 and discusses overall trends in court workloads and criminology. An annotated summary of news reports, books, and legal citations regarding incidents and court findings related to education and particularly higher education are provided. The information is compiled from the Chronicle of Higher Education and from the Westlaw law reporting service. The reader is reminded that individual case decisions do not necessarily have standing in other cases and that the decisions of a Circuit Court are binding only in the states included in that circuit. The topics include: discipline, the Family Educational Rights and Privacy Act and how it has been applied in cases of faculty and administration communication with students and others, and information technology such as the use of the Internet and free term paper services. Other topics addressed are: instructional issues including educational malpractice; athletics; campus crime; rape and sexual assault; sexual harassment; diversity and minority issues; gay, lesbian and bisexual issues; the Americans with Disabilities Act; torts (liability issues); substance use and fraternities; and campus protests. (JLS)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 405 779

COLLEGE AND UNIVERSITY STUDENT JUDICIAL CASES, INCIDENTS, MATERIALS: 1996

E. T. Joe Buchanan, J.D., Ph.D.
Provost, Virginia Beach Campus
Tidewater Community College
TCBUCHJ@TC.CC.VA.US
FAX (757) 427-0096

Contents **Page**

Special Note; Litigation in 1994; Annual Crime Numbers 1
1. Discipline 3
   1-1 References 3
   1-2 Numbers 3
   1-3 Incidents 3
2. FERPA; Information Technology; Instructional Issues 7
   2-1 Instructional Issues 7
   2-2 Information Technology 8
3. Athletics 13
4. Crime 14
   4-1 Regulations, Legislation 14
   4-2 Violence 15
   4-3 Threats 15
   4-4 Guns 16
   4-5 Search & Seizure 16
   4-6 Death 17
   4-7 Assault 18
   4-8 Bombings 19
   4-9 Arson, Theft 21
5. Rape, Sexual Assault 22
6. Sexual Harassment 24
   6-1 Peer Harassment 24
   6-2 Employee Harassment 26
7. Diversity 33
8. Gay, Lesbian, Bisexual Issues 38
9. ADA/504 39
10. Tort 40
11. Alcohol/Drugs/Fraternities 41
12. Protests 43

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

E. T. Joe Buchanan

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

HE 030 030

NOTE: "WL" refers to West Law. To access West Law, type "fi 1996 WL 367638," or the appropriate WL cite. The letter "C" refers to the Chronicle of Higher Education.

BEST COPY AVAILABLE

A Special Note on the Issue of "Stare Decisis", Precedent & Advice of Counsel. In discussing matters noted in this paper, it is important to recall that many of these cases have no binding force and effect as precedent under the "stare decisis" doctrine in your jurisdiction.

Only U.S. Supreme Court cases are binding throughout the U.S., and given both the K-12/postsecondary distinction and the public-private distinction in higher education, even U.S. Supreme Court cases -- e.g. due process cases -- may not bind all colleges.

Similarly, the decision of the 5th Circuit in Hopwood v. U. Texas is only binding on the 240 colleges and universities in the 5th Circuit -- Texas, Louisiana and Mississippi. Institutions in the other 47 states are still free to follow a diversity admissions policy, unless the Attorney General of a given state has ruled that the use of race in admissions is inconsistent with other case law binding that state, or the voters of the state have adopted a constitutional amendment incorporating the race-neutral posture of Hopwood, (unless a judge has issued an order restraining enforcement of the amendment) or a governing board concludes that a diversity admissions policy is inconsistent with the emerging case law.

All this suggests that you need to use these materials in concert with your own counsel, and you need to remember that a number of the incidents included are drawn from often sketchy and incomplete news accounts. So if you find yourself in professional peril, and seek to use this document as a life line, be sure to check with the institution where the matter occurred and consult your local counsel!

And remember, the first truth of Buddhism -- "All of Life is Suffering!" Now don't you feel better!!

Litigation in 1994. Fla. Bar News, 4/1/96.

State courts now have 97% of all cases. 86 million new cases were filed in '94 (52M - traffic; 19M - civil or domestic; 14M - criminal; 2M - juvenile).

Tort litigation is actually dropping. 815K tort cases were filed in '94 - with 60% auto accidents and 20% premises liability. Less than 3% of tort cases go to trial. Plaintiffs won 49% of tort cases, and median award was 51K. Million dollar

awards were found in 3% of tort cases that were tried.

Domestic relations cases have increased 80% since 1989.

DUI cases have dropped 11% since 1985.

Felony cases have increased 70% since 1984. Drug arrests have doubled since 1982. Of felony convictions, drug trafficking is the largest single crime, in number of cases. About 300K persons were sentenced to jail, and they served 40% of their sentence.

Fla.and Cal. had the highest total number of juvenile offenders in '94. Fla. had 110K, and Cal. had 100K. Fla. percentage of juvenile offenders per capita is 33% above the national average. Juvenile crime against persons was the fastest growing crime.

Annual Campus Crime Report Comparison C4/26
(N = 831 C&U with more than 5,000 FTE)

	Campus Data			
	'94	'93	% Change	National FBI Data Indicates A
Incidents				
Murder	19	15	+27%	decrease
Forcible sex	1,001	892	+12%	decrease
Non forcible sex	127	110	+16%	decrease
Robbery	1,375	1,365	+ 1%	decrease
Agg. assault	3,049	3,140	- 1%	decrease
Burglary	19,172	20,693	- 7%	decrease
Auto theft	6,624	7,219	- 8%	decrease
Arrests				
Alcohol	15,923	15,085	+ 6%	no info.

Defining Criminality Up

By John J. DiIulio Jr.

In his seminal 1992 essay, "Defining Deviancy Down," Sen. Daniel Patrick Moynihan described how society has come to treat as "normal" behavior that an earlier time would have considered intolerable, even unthinkable. Mr. Moynihan focused mainly on how Americans have "normalized" predatory street crime: We avoid bad neighborhoods. We lock our doors and windows. We avoid public spaces like parks, ceding them to criminals. We install burglar alarms and buy guns. We hire private security guards and move to gated communities.

Increasingly Numb

In short, we do what we can to spare ourselves from crime, we bemoan government's persistent failure to protect us even from known criminals, and we become increasingly numb to the everyday carnage others suffer. Meanwhile, academic experts assure us that crime is dropping and things aren't really so bad. But if we care about stopping the next generation of criminals before it's too late, we must start defining criminality back up. Here are five ways to begin:

1. Keep nay crime statistics in perspective. It's true that in New York and some other cities, reported crimes have fallen over the past few years. But only a fraction of all crimes are reported to the police, and there has been little real drop in nationwide crime rates since 1990. Based on the best data available, the U.S. Bureau of Justice Statistics reports that in 1994 Americans suffered 42.4 million crimes, 10.9 million of which were violent crimes. The BJS report shows that the violent crime rate "has been essentially unchanged since 1992, following a slight increase between 1985 and 1991."

Some experts stress that "only" about 40% of all violent crimes are murders, rapes, robberies or aggravated assaults, "only" a third of all violent crimes involve a weapon, and "only" a third of robbery victims are injured. But as millions of crime victims know all too well, the difference between a burglary and a robbery, or between a robbery and a murder, is often the difference between a crime victim who dares to resist, or who comes home unexpectedly, or who twitches in fear, or who gets treated quickly in the emergency ward – and a crime victim who does not.

Even in cities where reported crimes have plummeted in recent years, the incidence of serious crime remains many times what it was just a few decades ago. In 1967 President Johnson's crime commission declared that "there is much crime in America . . . far too much for the health of the Nation." The commission singled out "the crime of robbery, which, since it involves both stealing and violence or the threat of it, is an especially hurtful and frightening one. In 1965 in America there were 118,916 robberies known to the police." In 1994 there were 715,000 reported robberies – about *five times* as many per capita as the number the president's commission had called "far too much for the health of the Nation."

2. Acknowledge the banal brutality of today's criminals. Even the best statistical analyses can't capture the whole truth about crime in America. Consider the horrifying murder in March of Kathleen Weinstein, a 45-year-old New Jersey teacher. She was abducted by a 17-year-old boy who had bragged to his friends that he was going to steal a Toyota Camry for his birthday. He forced himself into her car, told her he had a gun, and demanded that she drive to a wooded area. In a 24-minute tape Ms. Weinstein surreptitiously recorded, she is heard begging for her life and counseling the boy not to ruin his own life by harming her. "All you have to do," she pleads, "is let me go and take my car." In response, the boy asks about the car's service record – then smothers her with her own clothes. No amount of scholarly rationalization can deny the sickening depravity of such a crime. But suppose a state trooper had happened by and arrested the boy before he killed Ms. Weinstein. Then he would have been recorded as an "auto thief" or at most an "unarmed robber" – not an attempted murderer. And, of course, he would have been a mere "first time juvenile offender."

3. Hold the line on vicious juvenile crime. Ms. Weinstein's murderer exemplifies the growing threat of juvenile super-predators who maim and murder without remorse or fear. But many crime scholars dismiss the threat. Boys will be boys, they suggest, impulsive and prone to get into trouble. Here are the facts: The number of gun homicides by juveniles in this country has nearly tripled since 1983. The rate of arrests on weapons charges for teenage males 15 to 18 more than doubled between 1983 and 1992. The number of juvenile gang killings nearly quadrupled from 1980 to 1992.

Even in cities where reported crimes have plummeted in recent years, the incidence of serious crime remains many times what it was just a few decades ago.

Not so long ago we had lots of guns, poverty, racism and surly teenage boys of every race, creed and color. But we also had more intact, church-going families, and we had nothing like today's level of carnage. If we heed the "experts" and normalize remorseless, impulsive violence by young boys, we will get what we deserve: ever higher levels of violent youth crime that won't be confined to the inner cities.

4. Focus on prisoners' total criminal histories. Those who define criminality down insist that even those who go to prison are often petty offenders who pose no real danger. The numbers tell a different story. A BJS report found that in 1991, 62% of all state prisoners had a history of violence. Another 32% were recidivists with no history of violence, so that 94% of prisoners were violent or repeat criminals. A pair of studies that Harvard economist Anne Piehl and I conducted in 1990 and 1993 found that the median number of crimes prisoners had committed in the year prior to their imprisonment was 12 – not including drug crimes.

Earlier this year I concluded an exhaustive analysis of the complete adult and juvenile histories of a randomly selected sample of state prisoners from urban areas. Among other things, I found that most inmates serving time for a nonviolent crime had committed violent crimes in the past, 91% of all prisoners had a current or prior adult or juvenile conviction for a violent crime, 77% had violated the terms of probation or parole, and 41% had committed their most recent crime while on probation or parole.

Dangerous Parolees

The last finding corresponds with BJS data, which show that 45% of state prisoners nationally were on probation or parole when they committed their latest crime – crimes that, for the 1991 prisoner population, included 13,000 murders, 11,600 rapes and 218,000 violent crimes altogether. The experts usually emphasize that most parolees and probationers don't commit violent crimes – but that's like responding to an epidemic of airplane crashes that claims thousands of lives by arguing that we don't need to do anything since, after all, only a small fraction of all yearly takeoffs and landings end in crashes.

5. Save the children. Decades of defining criminality down have diminished not only society's will to restrain felons, but our will to protect the innocent children who are most at risk of becoming criminals or crime victims. A society that numbs its natural outrage at criminals inevitably also dulls its natural compassion for the innocent. Anti-incarceration advocates have only themselves to blame when even their more sensible pleas for saving at-risk children fall on deaf ears and hollow hearts.

America's inner cities are populated by growing numbers of poor, fatherless, abused and neglected children who with every justification can lift their eyes to heaven and cry, "My God, why have you forsaken me?" These children are more likely than anyone else to become both criminals and victims. Unless we stop defining criminality down, they will soon teach us the hard way what the Roman sages knew: What a society does to its children, its children will do to society.

Mr. DiIulio is a professor at Princeton, director of the Brookings Center for Public Management and an adjunct fellow of the Manhattan Institute.

Drugs	6,138	4,993	+23%	no info.
Weapons	1,509	1,494	+ 1%	no info.

Tidewater, VA (Va. Pilot, 11/17/96). Violent juvenile crime increased from 325 (1990) to 500 (1995) in the 1.1M SMSA. '95 saw 274 robberies, 156 aggravated assaults, 41 rapes, and 13 murders. In the city of Virginia Beach (population of 500K), arrests for juveniles for violent crime was up 35% over 1990.

1. DISCIPLINE

1-1 REFERENCES

"Fraternities, Sororities, Binge Drinking," 33 NASPA Journal #4, 260-279; Wechsler, Kuh, Davenport.

" . . . Student Cheating and . . . Frat./Soror. Membership," 33 NASPA Journal #4, 280-291; McCabe & Bowers.

"Academic Dishonesty & The Perceived Effectiveness of Counter Measures . . . ," 33 NASPA Journal #4, 292-306; Hollinger & Lanza - Kaduce. A particularly helpful piece, both in terms of literature review and specific practices that students say work or not. The study reported was likely done at the U. of Fla.

1-2 NUMBERS

SYNFAX 5/24/96. Summarizes Prof. McCabe's Fall '95 study of cheating which found increases in several categories.

High Schools Who's Who Annual Survey (SYNFAX 1/22/96) 90% of respondents said cheating was common at their school; 76% said they had cheated on tests.

Stanford C2/16. Since 1990, disciplinary cases have doubled, and penalties are up over 100%. Similar increase reported at Indiana. Over a 4 year period, increase in "actions which endanger" (up from 250 to 393); "failure to comply" (up from 244 to 357); "verbal abuse" (up from 28 to 44); "drug possession" (up from 27 to 131); "viol. of univ. regulations" (up from 11 to 148).

1-3 INCIDENTS

THIS AIRLINE FOOD IS #!@!. (USA Today, 11/22/96). FAA issues guidelines to enable flight crews to deal with "bad" passengers. Guidelines include authorizing flight crews to handcuff passengers. American carries plastic handcuffs on all flights; crew to provide a written warning to miscreants. American had 882 incidents involving verbal/physical abuse of crew in 1995; 1994 saw 292; through August '96, American had 592 incidents. 1995 incidents included 18 Brits who get in a food fight in December '95 (Northwest); and a drunken United Airlines passenger who defecated on a food cart.

Free Term Paper Web Site C8/2. "School Sucks," a Web site offering free term papers to students and faculty. This is an electronic, but free, term paper mill.

Specificity of Conduct Code (Wilson v. S. Cent. Sch. Dist., Ohio App. 6 Dist., 669 N.E. 2d 277, 1996). High school student may not be suspended if charged with a violation which is not in the student conduct code.

Faculty Plagiarism - Chicago C8/9. History department chair publishes a book review. Chair is listed as sole author. Review was actually written by chair's research assistant. Chicago faculty panel finds chair to have plagiarized, (fortunately, chair now works at Harvard!) but not guilty of intentional academic fraud.

Law Clerk - Edwards v. Buckley, Ohio App. 8 Dist., Oct. 1995, 1995 WL 588781. Cleveland State general counsel fires a law clerk when he learns she also works for 2 campus student newspapers. Law clerk sued, claiming First Amendment violation. Held - no violation of First Amendment. Comment - is this your worst nightmare -- or what?

600K Judgement - Md. Col. Park C6/21. Former grad student obtains 600K judgement against 4 psychology professors for wrongful dismissal from the psychology department. Student alleges her dismissal was in retaliation for her complaints that the professors used racist/sexist stereotypes (eg. JAP) and made remarks about lesbians and obese people, and hence was a violation of her First Amendment rights.

Criminal Trespass - U. Washington C7/16. SGA president involved in looting $3,200 worth of merchandise from a store during a spring '96 Apple Festival. Was

convicted of criminal trespass. Got 90 day sentence, with 88 days suspended, upon making restitution.

Dancing - Baylor C4/26. Dancing on campus authorized.

USNA C4/26. Week long "stand down" ordered. Two students charged with B&E; 5 indicted for car theft ring; 2 for S.A.; 24 for illicit drug sale/use; 1 for murder.

Water Buffalo - Penn. C4/19. "Water buffalo" student sues Penn. for breach of contract and emotional distress over Penn.'s handling of the incident.

Compelling President to Comply with Judic. System - James Madison C6/21. Two students suspended in January. One had signed the other in as in attendance at a class. President first affirmed the suspensions, then in February revoked the suspensions, permitting the two to graduate on time. A senior filed suit in state circuit court, asserting president had violated JMU conduct code, and seeking reinstatement of the suspensions.

Off Campus Conduct - Ray v. Wilmington College, 667 NE 2d 39, Ohio. App. 1995. Ray is suspended for SA a female student in his off campus apt. Ray argues the College has no juris. off campus. Held - Reaffirm. of long line of cases that off campus conduct is within juris. of the college.

Premarital Sex (Hall v. Lee College, E.D. Tenn., 932 F. Supp. 1027, 1996). Private college suspends student for violating policy prohibiting premarital sex. Student - a single mother - sued, claiming a Title IX violation. Held - Title IX provides no relief to the suspended student.

Proposed Legislation - "Freedom of Speech and Association on Campus Act of 1996." Title XII of the Higher Education Act of 1965 (20 U.S.C. 1141 et seq.) is amended by adding at the end of the following new section:

Section 1214. Protection of Student Speech and Association Rights.

a) Protection of Rights - No student attending an institution of higher education on a full or part-time basis shall, on the basis of protected speech and association, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or receiving financial assistance under this Act, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

b) Sanction - 1) In General - No funds shall be made available under this Act to any institution of higher education that the Secretary finds, after notice and opportunity for a hearing, has violated subsection a) of this section. 2) Inapplicability to Student Assistance - paragraph 1) shall not apply to any funds that are provided under this Act for student financial assistance.

c) Exception - This section shall not apply to an institution of higher education that is controlled by a religious or military organization, if the speech or association is not consistent with the religious tenets or military training of the institution.

d) Sanctions for Disruption Permitted - nothing in this section shall be construed to prevent the imposition of an official sanction on a student that has willfully participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of the institution of higher education.

e) Definitions - 1) Institution of Higher Education - The term "institution of higher education" has the meaning given in section 1201(a). 2) Protected Speech - The term "protected speech" means speech that is protected under the 1st and 14th amendments to the United States Constitution, or would be so protected if the institution of higher education were subjected to those amendments. 3) Protected Association - The term "protected association" means the right to join, assemble, and reside with others that is protected under the 1st and 14th amendments to the United States Constitution, or would be protected if the institution of higher education were subject to those amendments. 4) Official Sanction - The term "official sanction" means condemnation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education or administrative unit of the institution; and b) includes an oral or written warning made by an official of an institution of higher education acting in the official capacity of the official.

Legal Immigrants Attending U.S. Colleges On Temporary Visas. U.S. Senate Bill

51665 would create a pilot program to track the disciplinary records of legal immigrants while in college.

2. FERPA; INFORMATION TECHNOLOGY; INSTRUCTIONAL ISSUES

2-1 INSTRUCTIONAL ISSUES

Malpractice Suits C9/16. 27 lawsuits were filed in '95-'96 against colleges and universities by students for breach of contract, fraud, misrepresentation, negligence. Several involve claims in excess of $1M. Suits involve N. Arizona University (ed. leadership program; Bard (interior design); Grambling (BS in applied math/statistics); Akron (surgical assisting technology) - 27.4M claim, based on accreditation; Arizona State (commercial airline pilot). Examples include Whayne v. USDOE, Jan. 1996, 1996 WL 48360. College's alleged failure to train the student is not grounds for forgiveness of the student's Fed. loan. Kansas does not recognize the tort of educational malpractice. Sirohi v. Lee, NY, 634 N.Y.S. 2d 119, 1996. Ed. malpractice is not a cognizable tort claim in NY against a university. Alleged false representations concerning atmosphere and discipline process at the institution.

MCAT Test Theft C9.6. Former Cal-Berkeley student tries to steal a copy of the MCAT test at gunpoint while the test is being given! The 150 test takers duck to the floor. Man is subdued when he puts down the gun to pick up the test. Gun proves to be a pellet gun.

Sale of Diploma - Mercy College C 6/14. Former international student advisor accused of selling forged diploma/transcripts. Got several thousand dollars. Criminally charged with felony of "receipt of a commercial bribe."

Grade Changes - Winthrop C 6/14. Vet. Affairs staff member changes 65 grades over several years. Criminal prosecution. Got 1 year of probation. Diplomas of 3 students revoked.

You Snooze, You Lose. Dilworth v. Dallas C. C. Dist., 5th Cir., ____ F. ____ 1996, 1996 WL 180272. Dilworth was tardy 6 times, and was counted absent. The 6 absences lowered his grade from an A to a B. He sued, claiming he'd lost

scholarships thereby. Held - his claim was frivolous and without merit, since he could not produce any papers proving he'd actually applied for a scholarship.

2-2 INFORMATION TECHNOLOGY

Lawyer Use of Technology. Fla. Bar News, 6/96. In Fla., a 1996 survey indicated the following uses of technology by Florida lawyers:

- use computer for word processing - 94%
- use computer for billing - 66%
- use computer for legal research - 64%
- use cell phone - 67%
- use CD/ROM - 64%
- have a modem - 59%
- use E mail - 47%
- use Internet - 35%
- use computer legal research services - 62%
- have a fax machine - 95%

One major impact - a quite significant increase in pressure on the lawyer e.g. "I faxed the contract to you half an hour ago - what do you think of it?" versus a "snail mail" 4 day turnaround.

Next innovation on the list - the use of voice recognition systems with legal specific software.

ASJA Related Web Sites (Jerry Riehl - VPI)
Security on Campus, Inc. (the organization founded by Howard and Connie Clery)- http://www.kornet.org/soc/

The National Victim Center - http://www.nvc.org/

Campus Outreach Services (founded by Katie Koestner, a woman who was reportedly raped while attending William & Mary, and is now a consultant). (A petition directed toward the Department of Education may be found at this site and is entitled "College Petition - A Petition for the Restoration of Effect to Federal Sexual Assault Laws.") http://www.cs.utk.edu/~bartley/cos/petition.html

Campus Security Homepage (contains good links to law enforcement and other campus security related sites) - http://www.bme.jhu.edu/~rjg/cs.html

Dept. of Justice - Violence Against Women Office
http:/www.usdoj.gov/vawo

Dept. of Ed. - Campus Safety
http:/www.ed.gov/offices/
ope/ppi/security.html

Alcohol/Drug Prevention
http://www.edc.org/hec/

Sexual Assault Information Page (contains some good links to legal resources and a lengthy section on higher education) - http://www.cs.utk/~bartley/sainfopage.html

Telecommunications Act of 1996. The first comprehensive revision of the Communications Act of 1934, and perhaps the most significant Fed. statute enacted in this decade. Covers universal service, rates, on line content liability, pay shares, telemedicare systems, broadcast licenses, telephone video systems, etc.

Commercial Use - Winthrop C 2/23. Four student computer accounts were suspended because they were being used for commercial for-profit purposes. Two sought donations and two advertised as free lance programmers.

Wiretap - Harvard C4/12/96. Argentine student uses Harvard computer system to access DOD military computers. Justice Dept. (FBI) obtains first ever wiretap on a computer system to monitor the student's activity.

Racial Slurs - UC Irvine C10/11. E-mail message with racial slurs/death threats sent to Asian-American students and staff. "If Asians don't leave campus, I will find and kill you." More than half of UC-Irvine's students are Asian-American. Ex student was indicted 11/15/96 on 10 Fed. Hate Crime charges. First Fed. prosecution of a hate crime transmitted via the Internet. Student indicted is Hispanic.

FOI-Access to E-Mail - FSU C3/1. FSU student criticizes overcrowded classes at

FSU in "letter to editor" in Tallahassee Democrat. The on-campus student newspaper uses Florida FOI to obtain e-mail of administrators reaction to the letter, to include president's message criticizing the Democrat for not checking it out with FSU staff, and a dean's suggestion of a search of the students' academic/financial records and a meeting with him. Student refused to comment when the Chronicle called. NOTA BENE - if you write it down, it can be accessed and published.

Vulnerability of systems got more play . . . Intrusions were noted at Clemson, Wisc-Milwaukee (criminal prosecution of intruder); Harvard (Justice Dept. charges college student in Argentina with accessing Harvard's computers to enter U.S. military computers); Cornell (installed a "firewall" to limit intrusion) . . . Summary - The Hackers/Crackers are winning the battle -- academic computers are very easy to access. GAO reported 250,000 unauthorized hits on DOD computers in a recent year. C5/24.

Encryption as a possible partial solution is limited by U.S. restrictions on encryption technology. C9/13.

Internet Indecency Laws. Federal statute making it illegal to transmit "indecent" or "patently offensive" material declared an unconstitutional intrusion on First Amendment rights. Overturned section of the Communications Decency Act. C6/21.

Model Institutional Policy. Texas A&M computer/e-mail policy has been widely disseminated, and is well regarded.

Virginia Decency Law Regarding Use of State Computers to Access Sexually Explicit Materials. Suit being prepared for filing in July '96. C7/19.

Virtual Sex is the Safest Sex - Triton College (Campus Security Report, 2/96). Suspect, with a history of felony sexual abuse, becomes familiar with disabled female student via Internet chat. Suspect invites student to meet him at his van on campus, where student is assaulted. Suspect was picked up when a second assignation was arranged, this time with police involvement. This case points up the value of "virtual sex," and the peril of the real thing.

Taking Down a Computer System by Overloading E-Mail. (Monmouth College) 2/16/96. Student retaliated for shutting down his computer access by dumping

24,000 E-mail messages on the two computer administrators who had denied him access. Student had been posting 1-900 messages. System was down for 5 hours. FBI was involved. Student was charged under the Fed. computer fraud act. This is a prosecution of first impression.

Use of Internet to Access Child Porn - Adelphi. C5/24. Soph. chem major arrested by NY state police. Charged with transmitting child porno on Internet. Material was found in the student's campus computer account by an administrator. Police accessed the account pursuant to a warrant. Material originated in Sweden and the Netherlands, and was transmitted on an Adelphi machine to those requesting such. Student was jailed and was suspended.

FERPA

"Litigation Involving FERPA," R.D. Mawdsley, J.D., Ph.D., ____WELR _____, 1996. An analysis of 20 years of reported FERPA decisions. Includes discussion of the interrelationship between FERPA and state records statutes. Highly recommended reading.

1994, '96 FERPA Stat., Reg. Revisions. Revisions authorize release of pers. identifiable information without consent if the student poses "a significant risk to the safety or well being of that student, other students, and other members of the school community." Cite 11/21/96 Fed.Register.
Internet cite is http://best.gbd.org/repos/frl/foc/961121.htmr.

Eg. In Fall '96, I receive an e-mail from a colleague at a neighboring institution that one of our '96 grads -- now in attendance at that institution -- told an English professor that if the grad has liver cancer, the grad was going to get a gun and kill everyone who'd ever crossed him. Among the people who had "crossed" him were a number of our faculty, my secretary, the entire financial aid staff, me, and our president. (I had fired him as a security guard after he said he was going to start stealing for a living.) I sent a memo to each member of the faculty and all administrative offices advising them of his statement. I named him, and included his social security number. Since he'd made several threats over his years with us to many of our folk, we treated it seriously. He later called and said it was all a hypothetical discussion. QUARE - Was the e-mail to me authorized under FERPA? Was my note to faculty/staff o.k. per FERPA and Campus Crime control statute? If

he sues for defamation, am I liable?

Children's Privacy Protection and Parental Empowerment Act. A Federal bill which seeks to reduce risk of child molestation by restricting a school district's distribution of personally identifiable information to third parties, unless the minor's parents give written consent. Would likely have an impact on some college's recruitment activities.

Privileged Communications (Jaffee v. Raymond, ____S. Ct. ___, June 13, 1996). Issue - is the content of a counseling session, in which a police officer who shot and killed a suspect is being counseled about the killing by an LCSW, privileged, or is it subject to discovery by the family of the person shot and killed? Held - the family may not obtain the content of these counseling sessions as part of their lawsuit against the police. NOTA BENE - this appears to be a substantial enlargement of the scope of the privilege, which has traditionally applied only to priests, M.D.s, lawyers, and spouses.

Student Election Vote Count - FOI and FERPA (Wall v. Fairfax Co. Sch Brd., Sept. '96, Va. Sup. Ct., 1996 WL 517741). Wall sought to obtain vote totals in school election. Va. Sup. Ct. ruled such would ordinarily be released under Va. FOI statute, but vote count is part of a student's educational record, and therefore is not releasable under FERPA regs. of school district.

FERPA & Grade Challenge. (Lewin v. Medical College of Hampton Roads, E.D. Va., 910 F. Supp. 1161). Medical student who claimed he was denied the right to challenge an alleged scoring inaccuracy on an exam filed a claim under FERPA. Student alleged he was denied the opportunity to challenge inaccuracies in the scoring of his pharmacology exam, and that his low grade caused his dismissal from the medical school. At the hearing on his dismissal, student alleged he was denied the assistance of counsel. Held - only the lower standard of academic due process needed to be met, and this was met. No right to counsel on these facts.

Sec. 1983 and FERPA. (Brown v. City of Oneonta, (N.D.N.Y.), 911 F. Supp. 580 916 F. Supp. 176, Jan. '96, 1996 WL 18975.) This is the case we have seen for several years. Recall a town resident complained about alleged violent behavior by young blacks the resident thought were students. A SUNY-Oneonta staff member compiled a list of all black males. The list was provided to law enforcement. Held -

these actions may constitute a claim under Sec. 1983 for conspiracy to violate FERPA. Note - this case raises the possibility of personal liability for release of information. In Feb. '96, the matter was set down for trial to determine if a constitutional tort had been committed.

Housing Inquiries (Lieber v. S. Ill. U., 664 IVE 2d 1155 (1996)). Disclosure by S. Ill U. of freshman inquiries about housing held not to constitute an invasion of privacy.

"Redacted" Conduct Files - (FSU v. Hatton, Fla. App. 1 Dist., April, 1996, 1996 WL 174349). Student charged with conduct code violation seeks records of last 2 years conduct cases, doubtless to raise an equal protection question. Held - such need not be produced. Such are protected by FERPA, etc. FSU can produce "redacted" (shortened and edited) versions for the plaintiff, which omit names of students involved.

Middleburg C 11/22/96. May post on transcript notice that person cheated or plagiarized.

3. ATHLETICS

Risk Taking Behavior C . Athletes are risk takers who are less likely to wear seatbelts or bike helmets and are more likely to drink, ride with a drunk driver, and use tobacco. Are involved in more fights; have more sexual partners and are less likely to use contraception. Males playing contact sports were most prone to such risks.

Survey of 650 Div. I football/basketball players. C 11/15/96. 25% gamble on sports and 5% gamble on their own games. 50% reported driving while DUI; 45% hit/threaten non-family members; 40% say they have thrown things at people or cars.

R.I. & VPI - multiple party violence involving football teams.

Harris v. U. Mich., Michigan Ct. of Appeals , C 11/22/96. Harris, a gymnast, was injured when the men's gymnastics coach took the team sledding on plastic garbage bags. Harris hurt his head and face when he crashed into a tree. Harris argued that

athletics are profit making, and therefore were a "proprietary" function - not a "governmental" function. Ct. noted that only football and basketball clear profit at Michigan. Held - athletics are an "inherently educational" part of the educational function, and are a "governmental" function. In Michigan, athletics are immune from damage, injury and wrongful act lawsuits. Attorney for the plaintiff plans an appeal to the Mich. Sup. Ct.

S. W. Mich. College C 11/22/96. Five freshman basketball players accused of raping an 18 year old off campus and videotaping the rape. All have been jailed and removed from college and the team.

4. CRIME

"Rescinding Offers of Admission When Prior Criminality is Revealed," ____ WELR ____ 1996, Stokes and Groves.

4-1 IN GENERAL

Campus Security Act Regs. C4/26. USDOE will change financial aid auditing procedures, adding a requirement that crime brochures be published and disseminated. Moorehead State and VPI - complaints of inaccuracies in data led to USDOE visits. C7/5. House of Rep. panel clears bill strengthening campus crime reporting process -- colleges would have to provide reports to DOE. Moorehead St., VPI C9/27. Mo. St. cited by USDOE for inaccurate crime stats. and for not making the report available. Gave Moorehead 30 days to comply.

Open Campus Security Crime Logs Legislation.

Section 1. Short Title. This Act may be cited as the "Open Campus Police Logs Act of 1995."

Section 2. Daily Record and Disclosure of Reported Crimes. (a) Amendment - Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f) is amended by adding at the end of the following new paragraph: (8) Each institution participating in any program under this title which maintains either a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can easily understood, recording in chronological order all crimes

against persons or property reported to its police or security department, the date, time, and location of such crimes, and, if an arrest has been made, the names and addresses of all persons arrested and charges against such persons arrested. The provision of this paragraph shall not be construed to require an institution to identify in its log, unless otherwise provided by law, the names of the persons reporting the crime, the victim or victims, any witnesses or suspects who have not been arrested, or the information relating to any investigation of the crime. All entries in such daily logs shall, unless otherwise provided by State or Federal law, be open to public inspection. (b) Effective Date - The amendment made by this section shall take effect on September 1, 1996.

Personal Defense - Self Help C 4/26. Schools of education are teaching personal defense skills to teachers. "We used to have fist fights -- now we have gun fights."

Center for Victim's Rights - U. New Haven C 8/9. UNH has a Center for Victim's Rights. 21 states now have constitutional provisions/statutes regarding victim's rights, including privacy protection, protection from accused offenders.

Oreg. State C6/21. Use of stolen credit cards to make 13k telephone calls. 11 indicted.

4-2 VIOLENCE

Workplace Violence (SYNFAX 3/21/96). OSHA published "Guidelines for Preventive Workplace Guidance . . ." on 3/15. Can be found @ http://www.osha.gov.

Tear Gas - Wis.-Madison C5/17. Tear gas discharged into dorm night before exams. Criminal charges were filed against dorm resident who had the gas.

Battle of the Bands - Ala. St./Jackson St. C9/13/96. Post football game brawl between some members of two school's bands. 80 police; 7 band members treated on the scene and released; 5 band members conveyed to hospital, some with "instrument inflicted injuries."

4-3 . THREATS

K-12 (Lovell, C.A. 9 Cal., 90 F. 3rd 367, 1996). Statement made by high school student to high school counselor, "if you don't change my schedule, I will shoot you," held not protected First Amendment speech.

Dartmouth C1/19. Ex student threatens to lynch and shoot treasurer of black alumni association, and to rape treasurer's wife. Ex student who is Native American was identified as black in an alumni publication. Convicted. Sentenced to 5 years probation and $225 fine.

4-4 GUNS

Weapons Arrests: Campus Crime Reports C 4/26. In '94, 1,509 weapons arrests were reported, up from 1,494 in '93, an increase of 1%.

Stanford C2/23. Guest at sorority benefit party accidently shoots himself with a weapon he had in his pocket. Gun owner not a Stanford student -- attends a local college.

4-5 SEARCH AND SEIZURE

"Use of Metal Detectors in Public Schools . . . ," ____ WELR____ 1996, Bjorklun.

Dorm Search - Appalachian C3/22. New policy allows campus police to search a dorm room for drugs without a warrant or the student's consent. Campus police can now enter on the basis of "reasonable suspicion" i.e. smelling marijuana, seeing towels against a door. 1,000 students petition for change.

Random Room Search - Southern U. C 10/25. La. district court judge holds unconstitutional a random search of a dorm room by dorm staff and police, where search produced marijuana, and led to arrest of room occupant. Held - random searches by police and dorm staff constitute an unwarranted s & s, if criminal prosecution is the end result. Such a search authorized for fire or health hazards.

Search - Commonwealth v. Nelson, 666 NE 2d 984, (Mass. 1996). Dorm staff enter a dorm room to ensure that a pet cat had been removed. Staff find 2 marijuana plants. Staff entry was pursuant to contract term authorizing health and safety inspections. Dorm staff then invite campus police in. Police, without a warrant,

seize the plants. Held - search by dorm staff authorized; warrantless S & S by police violates 4th Amendment rights of resident.

4-6 DEATH

Campus Crime Report -- Murders C 4/26. 19 murders were reported in '94, up from 15 in '93, for a 27% increase.

How Students Grieve: A Guide to Bereavement in the Schools, A.J. Liotta, $30, 1-800-341-7874 (about 200 pp.) Suggests how to structure post death responses, including counseling, memorial services, memorials.

Suicide. "School Liability for Student Suicides," Bjorklun, ____ WL ____ 1996. Suicide is the second leading cause of death of the young. Rate tripled between 1950 and 1990. This is an analysis of K-12 cases involving efforts to hold K-12 schools liable for failure to act to prevent the suicide, either under tort law or Sec. 1983. Some recent cases have propounded the theory that the absence of a suicide prevention policy/procedure constitutes negligence. No court has yet agreed with this theory. One recent case has held that knowledge of a student's intended suicide and the failure to warn can be a negligent breach of a statutory duty to protect students from foreseeable harm. QUARE - Does your institution have a suicide prevention policy and procedure?

Accidental Discharge - VMI C5/10. Accidental discharge of handgun kills 10 year old boy visiting VMI firing range.

Murder/Suicide - Harvard C6/7. Murder/suicide. Harvard junior kills roommate, self. Junior had been seeing a therapist at Harvard. Junior sent a letter to a student she did not know saying ". . . my life is hellish." Long article in 3 June "New Yorker" by Harvard English professor. Asserts Harvard should have been more supportive, or should have offered assistance, once the letter was turned over to a dean. Dean's office responds that all appropriate steps were taken.

"Thou Shall Not Speak Ill of Another Republican" - Hopkins C7/12. Ex-student, who earned Hopkins degree in chemistry in '95, allegedly kills Hopkins sophomore in April '96. Hopkins withholds degree until after the criminal trial, which is scheduled for October '96. Hopkins intends to hold a disciplinary hearing on ex-

student AFTER criminal trial is over. Argument between the two broke out at the campus Young Republicans meeting -- student killed was current chair, killer was a past chairman. Charge - first degree murder. Comment - withholding a degree already earned somehow seems inappropriate.

Rifle - Penn. State C9/27. Female student discharges 5 rounds from high powered rifle. Kills one student, wounds another. Incident occurs outside student union, where shooter hid under branches of a tree. Shooter was disarmed while reloading. Shooter tried to stab person who disarmed her.

Hostage - TCC. TCC-VB student shot, killed by ex-spouse in her home.

Hostage - N. Colo. C10/4. Gunman shoots ex-girlfriend in the foot; held her and 3 others hostage for 4 hours. Gunman shot, killed by police. Gunman is a primary suspect in the killing of his 3 roommates the previous day.

Engin. Profs. - San Diego State C9/6. Three engineering professors were killed. 20 9mm rounds discharged by disgruntled 36 year old grad. student, with lifelong history of mental problems. He was to defend his master's thesis for the 2nd time. Student begged police to shoot him when he was taken into custody.

Football Player and Friend - U. Miami C4/26. Linebacker and female friend found beaten in his apartment. Man was dead, woman died later.

College President - Rappahanock C. C. (Va.). C7/19. College president charged with murder. After apparently killing his wife of 30 years, made a 911 call stating he had suffocated, bludgeoned, and stabbed his wife, and had taken pills to kill himself. President remains in jail. Wife had been under treatment for years for mental illness.

Spousal/Lover Homicide. 700 abused women kill their abusive husbands/lovers each year, while 1,500 women are killed each year by men they live with.

4-7 ASSAULT

Rat Line - VMI C4/26. Six "rats" (freshman) suspended after 15 students assaulted one student who'd been excused from "rat line" adversive activities due to

surgery on his feet. The 15 tried to shave his head and to spray analgesic on his genitals.

S/L - Rhode Island College (Burke v. Rhode Island College, March, '96, 1996 WL 101187). Persons attacked on the way home from a college sponsored dance file a tort claim for negligent supervision and premises liability. Claim held barred by 3 year S/L; suit was filed 3 years and 1 day after the incident.

4-8 BOMBINGS; TERRORISM

Islamic Jihad - U.So. Fla. C4/26; NACUBO Journal 11/96. Campus classes shut down for 3 days. Threat of bombing unless admin. apologizes to former faculty member, who is now leader of Islamic Jihad, a mid eastern terrorist group! On Oct. 1, Fed. grand jury indicted USF student for 2 counts of mailing threats.

USF response included the following:

Emergency Operations Center: The primary and secondary sites for the center were established, along with a list of the personnel who would report to the center if any of the threats were carried out. The basic function of personnel in the EOC would be to take appropriate steps to provide for the safety and security of the university community and the protection of university facilities.

Personnel: Delegation of authority for granting of administrative leave and other leave types were documented as a reminder to the university community.

Events and Activities: All events and activities scheduled for the day of the threat and the preceding weekend were reviewed to decide if the university should cancel them. The only events and activities that took place as scheduled were those with adequate security that would not interfere with the steps involved in the special security action. The university canceled most events.

Faculty/Student Relations: Final exams were rescheduled. Administrators decided to avoid exposing student to the added pressure of taking exams while under terrorist threat.

Communications: One of two specified individuals cleared all university

announcements and statements. The university held news conferences to provide accurate, consistent messages to the public. Separate telephone hot lines for the internal community, the public, and the news media were established. An 800 number was set up for parents to call and alleviate any concerns they may have had about their children. The public relations office developed special passes for media personnel who were covering the threat.

Residence Halls: Residents with an option to stay off campus during the threat were encouraged to do so. Security was tightened in and around the residence halls for those who remained on campus.

Facilities: Mail an other deliveries were canceled for the day of the threat. A list of buildings thought to be possible targets was developed, and single-entry access was established for buildings on the target list. All construction work on campus was stopped two days before the designated date to reduce the number of nonuniversity personnel on the campus.

Parking and Transportation: Access to the campus was restricted to certain roads and parking lots, which was not announced in advance. All university vehicles, normally parked near buildings, were moved to remote areas of the campus. A tow truck was on standby to immediately remove any suspicious vehicles.

Police Services: University police provided personal protection for persons believed to be possible targets. Personal safety programs were offered for any female member of the faculty or staff who wanted to attend. Target buildings were sealed and searched by a bomb squad using dogs. City police, county sheriff deputies, Florida Department of Law Enforcement personnel, and FBI agents helped university police in providing security for the campus during the threat. With the combined effort of these agencies, the number of law enforcement personnel on the campus was tripled.

Crisis Intervention: The Student Counseling Center and the Employee Assistance Program scheduled time for crisis counseling. Resident assistants were given the name and numbers of counselors to call for emergency services in the residence halls. The Victims' Advocacy Program advised the community that counselors would be available to help anyone in need of their services. Linkages to other counseling services were established in the event the terrorist threats were carried

out. The county emergency operations center was notified of the threat, and the center in turn informed appropriate area treatment facilities.

Cost Estimates: Budgets for planned responses were estimated and extra costs were recorded. Most of the extra costs were for police over time. All the officers were provided at least one meal on campus during their 12-hour shifts for a three-day period at university expense. Having the officers remain on campus and visible to the community as officers tightened down the campus was an integral part of the plan.

Terrorism Resources: These resources can be accessed through the World Wide Web:

Terrorism: A Frightening New Perspective, by Sam Perry, contains advice from 100 government and security industry professionals in the U.S. and around the world. http://www.acsp.uic.edu/oicj/pubs/cji/110501.htm
University of Global Education provides information on how to defuse terrorism. http://www.pacificrim.net/~nature/univ/html
Intelligence on the Web, updated every month, is a comprehensive guide to intelligence-related resources. http://www.fas.org/irp/intelww.html
Terrorism: What is it and how is it defined? is a home page that discusses terrorism. http://www.gyw.com/terrorism/
Counter-Terrorism Page provides a summary of global terrorism events, groups, and counter-terrorist strategies. http://www.emergency.com/cntrterr.htm

Hand Injury - New England College C4/12. Student loses 3 fingers on left hand when bomb he was making explodes. Student was in dorm room. Police found 5 bombs, a handgun, a rifle, and alleged controlled substances in the room.

Cal. Berkeley C2/2. Mail bomb sent to engineering lecturer at Berkeley.

4-9 ARSON/THEFT

FSU C2/16. Freshman charged with arson in 18 separate fires -- many in trash chutes. Also broke into 50 mailboxes -- made 4K in purchases using stolen credit cards.

Computer Monitor, Hard Drive Thefts. NACUBO Journal 11/26.

5. RAPE, SEXUAL ASSAULT

Campus Crime Report Forcible Sex C 4/26. 1,001 incidents were reported in '94, up from 892 in '93. Increase of 12%.

Reassignment of ASJA Member/Judicial Officer - California of Pa. (Herald - Standard 9/22/96.) Dr. Phil Hayes, dean of students/judicial affairs at California of Pa. since 1970 was reassigned to the purchasing department effective with the Fall, 1996 term. The basis for the reassignment, ordered by president Angelo Armanti, was a November 30, 1995 letter by a female student complaining that Hayes did not help her deal with a rape in which she was the victim. The complaint letter was investigated by an attorney from Pittsburg, a Caroline Roberto. The president stated that Hayes conducted himself in an "inappropriate manner," after reviewing Hayes' written and verbal responses to the student. The assailant was charged with rape, involuntary deviate sexual intercourse, aggravated indecent assault, indirect exposure, harassment and stalking. The student charged in the letter of complaint that Hayes helped raise bond money for the assailant, a charge which Hayes denies. Two unions have filed grievances over the reassignment. Hayes has taken sick leave, and has not reported for the reassignment. Hayes has been at Cal. of Pa. for 26 years, and is 61 years old. He holds a master's in counseling and a doctorate in administration. He states he is not qualified to work in purchasing.

K-12 Sexual Assault (____ v. LA School Dist.,). Jury trial ends with 1.5M judgement for student to student SA. 11 year old was the assailant -- 8 year old was the victim -- both were boys. The 11 year old transferred from Ark. when he was determined to be seriously emotionally disturbed after a series of violent and sexually inapprop. acts. Ark. had a teacher's aide on him one on one during the school day. LA Dist. put the 11 year old in a regular class without fully reviewing his file -- said to be "voluminous" -- from Ark. The file was not fully reviewed until his second arrest for SA. Defense counsel reportedly blamed the victim's mother for "overreacting", and alleged that the victim consented to the sexual acts.

Note - this may be the largest K-12 student on student SA award ever -- and it parallels some of the egregious student on student SA cases in higher education.

Viol. Against Women Stat. - VPI (Brzonkala v. VPI, W.D.Va., 1996 WL 431097, July, 1996). C5/17; C8/9. USDC judge dismisses VPI as a party, and later two individual football players from second case tried under Violence Against Women Act. Plaintiff seeks $8M, alleging dorm rape in '94. Plaintiff claims student disciplinary system is discriminatory, and that VPI had mishandled its investigation of her complaint, and its handling of her in light of criminal justice system. Same judge later held this statute unconstitutional as not supported by the Commerce Clause nor by the 14th Amendment. "Congress is not invested with the authority to cure all of the ills of mankind." BUT SEE DOE v. DOE, 65 L.W. 2087 (D.C. Conn. 1996). Suit under Violence Against Women Act. Abused wife against her husband. Husband attacked the stat. is unconstitutional extension of Cong. authority under commerce clause. Held - stat. is constit.

Date Rape Drug C6/28. Rohypnol reportedly involved in the ZBT (UCLA) rape incident. Several press reports indicate the drug is being used to sedate women -- who black out. Drug, a sedative, is used to enhance mari./alcohol "high." UF reports 20-25 such blackouts of women students. Drug manufacturer has agreed to pay to test any rape victim who believes she was given the drug prior to an attack.

Rape - M.L. v. U. Pitt., Phi Gamma Delta, Common Pleas Court, Allegheny Co., Pa., 1995). M.L. was an underage minor. She attended a "grain party" at the Fiji house. Her hand was stamped as a minor. Nonetheless, she was served, became intoxicated, and was gang raped by members of several fraternities in attendance. Held - Pitt. has no liability, because it cannot be considered a social host under Pa. law. Fiji was ruled to be a social host, since they served a minor and since Fiji's actions created a "special relationship," and Fiji has a high duty of care, having got her the means to get drunk. Issue of foreseeability of harm sent to a jury.

Discovery of Prior Sexual History - (Andersen v. Cornell University, March, 1996, 638 N.Y.S.2d 852.) Plaintiff could not be compelled to state if she had sex with individuals named in discovery documents, and was not required to identify by name sex partners, nor describe her relationship with them.

Stalking Stat. Unconstitutional. (State v. Bryers, Kans. Jan. '96, 910 P.2d 212, 1996 WL 36169.) Kansas Supreme Court held unconstitutional for vagueness state stalking stat. Case involved two students at a university.

Stalking - R.G. v. T.D. (PaSuper., 672 A.2d 341). Students were boy and girl friend, who broke up. Female seeks protective order prohibiting all contact for one year. Male had called and e-mailed, making threats, said she was the object of his obsessive-compulsive obsession. Order was granted.

Fed. Anti-Stalking Statute, 1996. Crossing state lines to harass or threaten someone is now a Fed. crime. Now violating a protective order by pursuing a victim across a state line is actionable in a Fed. criminal trial.

6. SEXUAL HARASSMENT

Title IX: Student to Student SH - Faculty/Student SH. OCR released draft guidelines for student to student and faculty to student (K-12) SH!!

6-1 SEXUAL HARASSMENT GUIDANCE: PEER HARASSMENT
(SYNFAX, 9/2/96)

The student to student guidelines were released on August 14, 1996. ASJA responded to the draft with a 5 page letter which is summarized below. Concerns were noted with draft language relative to

- a finding of hostile environment, in which an institution may be found to have violated the OCR guidelines even if the complainant failed to use the institution's complaint procedure.
- inadequate reference to relevant case law, such as Yusuf v. Vassar College.
- First Amendment rights of students in cyberspace.
- the issue of imputing liability to an institution, based on the acts of students, when such students are not agents of the institution, under agency law principles.
- the line of hate speech cases on hate speech codes.
- FERPA rights of accused students.

One K-12 publication on Student/Student SH is "Interpreting OCR's Guidance on Peer SH," LRP Publications, $22.50, 80 pp., 1-800-341-7874. This document indicates that significant amounts of peer K-12 SH occur on school buses, and the SH is often more severe on buses than that occurring in other settings.

Regs indicate schools and colleges will be liable under Title IX for student sexual

harassment only if the institution is noticed of the S/H and does not take immediate and appropriate steps to remedy S/H. (Web site (http://www.ed.gov/). OCR guidance is at variance with a May '96 5th Circuit decision, (Rowinsky) involving 8th grade boys touching girls breasts and genitals, and making sexually suggestive comments on a school bus. 5th Circuit ruled school district could be liable under Title IX only if it handled claims of student S/H differently for boys and girls. Male students were held not to be agents of the school district and hence, liability could not be imputed to the district. (Rowinsky, Apr. '96, 1996 WL 153985). Quare - in the 5th Circuit, which controls -- the court case or the OCR guidance? Rowinsky was appealed to the USS Ct., which refused to hear it.

Contra to Rowinsky is Davis v. Monroe Co. Bd. of Ed., Feb. '96, 1996 WL 34625. 5th grader's claim of hostile envir. S/H by a fellow classmate was held to run against the school board. Here school officials failed to take action; behavior lasted 5 months; criminal charges were filed.

Compare Doe v. Petaluma School Dist. (N.D. Cal. 1996), a K-12 school which does not create and implement policies reasonably designed to facilitate the reporting of severe SH incidents can be inferred to have created a hostile environment.

Wright v. Mason City Community School Dist. (N.D. Iowa), Aug. 27, 1996, 1996 WL 526274. A student seeking damages from an educational institution for peer sexual harassment under Title IX must prove: (1) that the student is a member of a protected group; (2) that the student was subject to unwelcome sexual harassment; (3) that the harassment was based on sex; (4) that the harassment was sufficiently severe or pervasive that it altered the conditions of the student's education and created an abusive educational environment; and (5) that the educational institution knew of the harassment and intentionally failed to take proper remedial measures because of the student's sex. The court rejected a test employed by another federal circuit which would award damages for an institution's negligent failure to prevent peer sexual harassment.

Same Sex Harassment (Nabozry v. Podleshy , C.A. 7 - Wis., July '96, 1996 WL 428031.) Gay student is being SH by his peers. Harassment included name calling, hitting, urinating on him, mock rape. Plaintiff twice attempted suicide, and was diagnosed with Post Traumatic Stress Disorder. This went on from 7th to 11th grade. Alleges school district took no action - but would have taken action if he

were female. Held - case should go to trial on issue of equal protection. A settlement of 900K was announced on 12/9/96!! See also Quick v. Donaldson Co., 8th Cir., July '96. Plaintiff sued under Title VII of '64 Civil Rights Act, after fellow employees grabbed his testicles more than 100 times. Act was called "bagging." Plaintiff suffered permanent injury to left testicle.

6-2 SH GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES.

These faculty to student SH guidelines, published in October, state that a school will not be liable under the "knew or should have known" standard, but will be liable if a teacher or other school employee uses his/her authority to force a student to participate in sex. This standard makes the school and school district liable under agency law.

The faculty/student guidelines define quid pro quo and hostile environment per the case law.

Highlights of the draft guidelines:

- Schools are strictly liable for quid pro quo.
- Schools are liable for hostile environment SH when the employee
  - acted with apparent authority
  - was aided in carrying out hostile environment SH by his/her position of authority.
- The guidelines can apply to the acts of maintenance and custodial workers - especially for younger students.
- Schools must adopt and disseminate a SH policy. A school is strictly liable under Title IX is it does not have such a policy, even if no SH has occurred.
- To be actionable as SH under the OCR guidelines, the sexual conduct must be
  - unwelcome
  - unsolicited
  - undesirable
  - offensive
  - student need not object
- "Consensual" relationships are presumed to be non -- consensual if between a

school employee and an elementary student, and there is a strong presumption that a high school or junior high student's relationship with an employee is not consensual.

- The OCR mandated grievance process should provide for notice of outcome and disposition of the complaint consistent with FERPA. If harasser is an employee, he/she has no FERPA rights, but may have personnel law privacy rights.
- Reference is made to First Amendment Issues.

Nov. 18, '96 was the deadline for comments on the draft. The point of contact is Howard Kallem, USDOE, 600 Indep. Ave. SW, Rm. 5414 Switzer Bldg., Wash. DC 20202-1174, 202-205-9641.

It should be noted that OCR plans to combine the drafts into a single document at some time in the future. This development must be carefully monitored. There are significant and substantive distinctions between:

- K-12 and post secondary
- public and private (constitutional vs. contract issues)
- union and non-union institutions

Further, OCR has apparently not yet identified the issue of "contra power" harassment . . . the SH of faculty by students, which apparently most often occurs by male students SH female faculty.

Recent SH cases involving Fac-Stu SH merit careful attention. The 8th Circuit, in Kinman v. Omaha Sch. Dist., 1996, held that a same sex relationship between a teacher and a student was actionable under Title IX, even though the school district had monitored the student's phone calls, interviewed the student, gave the student a polygraph test, and confronted the teacher! When the relationship was confirmed, the district fired the teacher!

Compare Landreneau v. Fruge, La. App., 3 Cir., 676 So.2d 701). Principal and school board not liable for teacher/coach's facilitation of lesbian encounter between teenage girl and adult woman.

"Save the Last Dance for Me"- In Nelson v. Almont Com. School, 931 F. Supp. 1345 (E.D. Mich. 1966), a male junior and his female English teacher had a 6 month

relationship. During this time, the student and the teacher were nominated for homecoming king and queen, and were slow dancing at the winter dance. Both denied a relationship when questioned by the principal. Nelson, the student, attempted suicide, and his parents found evidence of the relationship in his diary and in letters. His parents sued, alleging the school failed to end the relationship. The court refused to grant a summary judgement for the school. The matter was set down for trial on the issues of 1) the reasonableness of the principal's actions, 2) whether the teacher's sexual advances were unwelcome.

Rape (Wright v. Mason District, ND Iowa 1996). Wright was raped by her boyfriend. When she reported the rape, her classmates at Mason High physically assaulted her, engaged in name calling and graffiti. She then sued under Title IX, and a jury awarded $5,200 for the school's failure to stop the SH. On appeal, it was held there was no evidence of intentional discrim. against the plaintiff. School staff had punished her assailants, separated her from the rapist during the school day, and promptly removed the graffiti.

Rape - (Doe v. Hillsboro (Tx.) School District, 5th Cir., Apr. '96, 1996 WL 194831). K-12 student raped by school custodian has a Sec. 1983 action against school board, and others in the chain of command, based on failure to check criminal records of job applicants. At time of the rape, 1/3 of the maintenance staff were convicts, many for crimes of violence. School staff did nothing about maintenance staff who were reported to be SH students. NB - this liability runs personally against school administrators and board members!

"Punishing the Messenger: The Effect of Reporting Male Colleague Alleged SH (on the party reporting the same)," ____ WELR ____ 1996, Hassenpflug. Suggesions for avoiding retaliatory demotions, firings when a K-12 teacher reports alleged sexual misconduct.

SH Classroom Speech. San Bernardino College. This is said to be the first Federal appellate decision relative to sexually harassing speech in the classroom. C9/6 (9th Cir., ____ F.2d ____, 1996). An English professor used profanities and vulgarities, read Playboy and Hustler aloud, and discussed obscenity, cannibalism, and consensual sex with children in class. Professor assigned a paper asking students to "define pornography." Student sought alternative topic, professor refused, student filed grievance under College's "hostile learning environment" policy. College

committee found his teaching created a hostile environment, put him on probation, and ordered him to attend a SH seminar and to modify this teaching. Professor sued in Federal district court for violation of First Amendment rights. Federal district court sustained the College. Held that SH speech that unreas. interferes with acad. performance, or that creates an intimidating, hostile or offensive learning environment is not protected by First Amendment. Ninth Circuit Court of Appeals reversed, citing the "vagueness" of the college policy, which is almost word for word the EEOC regulation !!! (What does this say about the constitutional viability of the EEOC regulation?)

Robert O'Neil suggests colleges and universities adopt the language of the AAUP model S/H policy. Under the terms of the AAUP policy, before it may be punished as harassment, speech must be "of a sexual nature . . . directed against another," must be shown to be "abusive" or "severely humiliating" or to have persisted despite the objection of the person or persons against whom it was directed. Alternatively, it must be speech that is "reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers."

O'Neil underlines the importance of adequate notice of the policy to faculty, and of the use of all procedures when the policy is allegedly violated.

What -- if anything -- does this case say about student to student speech? How would the 9th Circuit's opinion, for example, apply to the Penn. "water buffalo" case?

An incredibly helpful article entitled "Beyond Speech Codes: Harmonizing Free Speech and Freedom from Discrimination on Campus" appears in the Journal of C & U Law, V. 23, Summer '96, 91-132. This is the best article I've ever seen on this topic -- reports OCR rulings on such topics as the N word.

SH - Illinois, Michigan. C 11/15/96. Ill. provost is interviewing for Mich. presidency. Is asked how to handle a prof. stalking and SA a grad student. Provost reportedly said he knew of no such case. The next day, 30 Illinois profs. sign a letter saying a similar scenario had occurred in the Illinois psych. dept. Illinois administrators say that case involved exposure and a "quid pro quo" situation. Ill. provost does not get the job.

Rubin v. Ikenberry (C.D.Ill., 933 F.Supp. 1425). University's response to sexual harassment claims by students did not violate professor's rights to due process, free speech, or academic freedom.

Karibian v. Columbia U., S.D.N.Y., 930 F. Supp. 134, C7/12. This is our old friend, an off the wall case in which Columbia was found by the jury not to have sufficiently investigated a S/H claim, despite having investigated and fired the alleged harasser. A federal district court judge threw out a jury award of $450K to Karibian, finding that Columbia did all it could do to investigate and remediate.

Early Retirement - E. Washington U. C7/19. Two female students allege both rape and attempted rape by soc. professor. Prosecutor refuses to prosecute, on grounds of insufficient evidence (no fluids sample taken). Resolution - faculty member takes unpaid leave until 1998, and then retires. Faculty and students protest against the terms of the workout -- wanted a faculty disciplinary evaluation.

Women's Studies - Emory C3/29. $2M in damages sought. Allegation -- head of women's studies department shouted at associate director, forced embraces on her, and made her run errands. Plaintiff was fired for "abandoning her job." Defendant denies all allegations. Emory settled with plaintiff; defendant pays nothing.

Retaliation - Calif. of Pa. C5/3. Dept. chair allegedly touches, kisses and makes sexual comment to a female professor and a female secretary. EEOC investigates. In course of investigation, an additional secretary comes forward. Apparently Calif. does not take sufficient action, and allegedly retaliated against the second secretary. US Dept. of Justice files suit on behalf of the professor who allegedly harassed. The two secretaries have settled, and now work elsewhere.

"The Lecherous Prof." - Boston U. C4/19. Former grad student seeks 100K and attorney fees alleging that when she refused to have sex with professor, the professor retaliated by not having her play produced. Professor has had similar allegations made since '81, and he has been described in Boston literary circles -- so the Chronicle says -- as a "sexual predator." Ex-student files suit, bypassing BU internal process. Student also sues BU for employing the prof. despite his alleged reputation. BU denies such knowledge, and states that no SH claim has ever been made against the professor. One S.H. incident at Harvard in 1981 involving this professor is said to be included in a 1984 book entitled The Lecherous Professor.

Suit against professor settled in Nov. - terms are confidential (C 11/24/96). Suit against B.U. still in process.

Crew - Temple C9/16. Female crew members allege sexually hostile environment created by coaches and members of men's team. Training room said to be decorated with lewd photos, and males made lewd comments, gestures to females. An earlier incident in '94 led to a $5K payment to a woman on the crew team, who alleged a part time assistant men's coach made lewd gestures to her.

"Rebecca of Sunnybrooke Farms She is Not" - Ala. - Tuscaloosa C6/7. 40 year old female enrolls in women's studies program seeking a master's degree in Fall '94. In Nov. '94, student becomes romantically involved with head of women's studies program. Student leaves school, then returns in '95 to obtain masters in women's studies. Student alleges improprieties by women's studies head. Head alleges romance was initiated by student, and there were no academic improprieties. Student is a transsexual and is seeking a sex change operation. Professor's lawyer says student is "not Rebecca of Sunnybrooke Farm," and suggests she is seeking a deep pocket to pay for the operation.

Use of PR Firm - Maas v. Cornell U. C9/27. Cornell disciplined Prof. Maas for SH reported to have occurred with several female student assistants. Maas hired a NYC attorney and a PR firm, and filed suit for 1.5M claiming his rights were violated under either T.9, or the NY state version of T.9. A state trial judge dismissed all of Maas' claims, except that Cornell had been negligent in handling his case. Maas is represented by the Center for Individual Rights.

Quid Pro Quo - Chicago St. C10/11. (Bryson v. Chicago State, C.A. 7-Ill, Sept. '96, 1996 WL 528821). Professor alleges former provost sought her sexual favors, and when she said "no," she lost committee assignments and a job title. Appeals court required the matter to go to trial -- trial judge had granted a motion to dismiss her case.

Strict Liability (Pinkney v. Robinson, D.D.C., 913 F.Supp. 25, 1996). Law school could not be held strictly liable for its dean's SH, which created a hostile work environment.

SH and Title IX. (Nelson v. Temple U., E.D.Pa., Feb. '96, 1996 WL 65481.)

Student activities coordinator allegedly SH and SA a student, who sues him for SH pursuant to Title IX. Held - Title IX does not create a cause of action for SH against student activities coordinator personally, but he can be sued in his official capacity under Title IX. Also has viable state law civil rights and Title IX claims against Temple. Slater v. Marshall, (E.D.Pa., 906 F. Supp. 256, 915 F. Supp. 721, 1996). Student's complaint of quid pro quo SH by professor, to have viable cause of action under Title IX, must allege the college or a supervisor was aware of the discrim. against the plaintiff.

Motzkin v. Trustees of Boston University (D.Mass.), Aug. 5, 1996, 1996 WL 528602. A former associate professor who had been terminated following sexual harassment charges, was incapable, with or without accommodation, of performing the essential functions of his job, a special appointment with primary emphasis on the teaching role. Therefore, he was not a qualified individual with a disability under the Americans With Disabilities Act. The professor's counsel indicated the professor was presently not qualified to teach, even with the treatment the professor was receiving. The professor testified he was presently not qualified to teach because of a psychological disorder causing "disinhibition."

Check off all the Boxes - (Pallet v. Palma, S.D.N.Y., Jan. '96, 1996 WL 56106.) A college provided a reasonable avenue for sexual harassment complaints and took all reasonable remedial action once notified of two students' complaints of a tenured professor's sexual harassment and, therefore, could not be held liable for the harassment under Title IX. Although the students claimed the college ignored rumors of the professor's sexual harassment, the college provided copies of its policy against sexual harassment and its complaint procedure to all students and faculty; the dean encouraged both students to file a formal complaint against the professor, in accordance with the college's disciplinary procedures for tenured professors, after each personally notified him of the professor's actions; the dean's delay in taking action with regard to one of the student's complaints was due to the fact she requested him to keep her complaint confidential and not take any action; the college suspended the professor immediately after one of the students made a formal complaint; and the students failed to cooperate with the college in the proceedings to terminate the professor's tenure.

False Claim of SH. (Starishevsky v. Parker, NYAD 1, 1996 WL 135025, March 1996). College employee was fired for SH. Former college employee/plaintiff files

suit, alleging defendant told a student to file the claim, knowing the claim was false, and that the defendant provided confidential information about the claim to a newspaper. Held - Allegations state a valid cause of action; trial ordered.

SA by Priest (Gebhart, Ohio, App. 1 Dist., Aug. 1995, 1995 WL 453056). Liability for sexual assault by priest on non-student, done at night in priest's campus residence, held not to run to the priest's employer, the College of Mt. St. Joseph, under respondeat superior doctrine. Priest is on a "frolic and detour" when he engages in SA.

Watson v. Duke Hospital C10/95. Bobby Dixon, a Duke hospital employee, allegedly grabbed S. Watson, a fellow employee, and drew a picture of Watson with a penis between her legs. Dixon denies all. Watson seeks a jury trial. The jury orders Duke to pay Watson 500K in pun. dmgs., and to improve its SH policy. (When I had a student job at Duke -- I worked as a carpenter's helper -- sexual exploitation of hospital staff appeared to be routine.)

7. DIVERSITY

Community & Diversity, Dungy, NACAC Journal, 1996.

Minority Students Constitute 24% of College Enrollment in '94 C5/24. Minority enrollment had doubled since 1976, to approx. 4M . . . of a total enrollment of 14.3M . . . Women have outnumbered men in C & U since 1984 . . . 1.5M more women than men attended C & U in '94 . . .

Enrollment by Race, Ethnicity in '94:

African-American	1,000,000
American Indian	127K
Asian	744K
Hispanic	1,449,000
White	10,427,000
Non U.S.	456K

Minority enrollment is more than 20% of all enrollments for states from California to Florida on the Southern border, and from Ga. to NY on the eastern U.S. border.

Recall that the 1980's saw the largest in-migration into the U.S. in several decades .

Fed. Procurement and A/A, 61 Fed. Reg. 26042, May 23, 1996. Race conscious procurement in the Federal sector permissible only after a disparity study shows credible evidence of discrimination.

Election Law Cases. The USS Court handed down cases on voting rights, affecting districts drawn to encourage minority representation, involving North Carolina and Texas. In 5 of 6 of the redrawn districts, the minority incumbent was reelected.

Hopwood's Progeny. "Squaring A/A Admissions Policies w/ Fed. Judicial Guidelines: A Model for the 21st Century." Leslie Garfield. Journal of C & U Law, V.22, Sp. '96, #4, 895-934. Discusses Podberesky and Hopwood, and proposes a model to meet the constitutional "strict scrutiny" test, as opposed to diversity admissions policies. "The Constit. Problem of Race Based Scholarships & A Practical Solution," ____WELR____ 1996, Taro. See also ". . . Does Strict Scrutiny Sound the Death Knell for A/A in Higher Ed?", Ware, Journal of C & U Law, V. 23, Summer '96, 43-90.

U.T.-Austin Law School Admissions (Hopwood v. U.T.-Austin, 78 F.3rd 932, March 1996. In March '96, 5th Circuit (w/juris. over Tx., La., and Miss.) ruled the UT-Austin law a/a program unconstit. The decision barred the use of race as a factor in admissions, and said race could only be used to make up for the continuing effects of past de jure discrimination. Diversifying the student body was not a legally defensible rationale for the use of race in admissions decisions.

Significant paraphrased excerpts from Hopwood.. . . "Governmental action that distinguishes between persons on the basis of race must be subject to the most exacting scrutiny . . . UT-Law has presented no compelling justification, under the 14th Amendment or Supreme Court case, to rationalize evaluating some races (here Af.-Am. & Mexican) over others . . . Any consideration of race or ethnicity by UT-Law for the purpose of achieving diversity in its student body is NOT a compelling interest, under the 14th Amend. and recent USS court cases eg. Podbersky and Aderand."

Based on 5th Circuit ruling, UT and Rice in March stop using race as a criteria in admissions. SMU and Trinity decide to maintain current policies until matter is

decided by USS Ct. Tulane decides Hopwood applies only to public institutions, and ignores it. (C4/5).

In April the Ga. AG wrote to Ga. colleges directing them to discontinue using race as an admissions factor. Texas suspended several statewide scholarship programs, and Tex. A & M settled a lawsuit relative to the exclusion of white children from a summer program for talented children. In Calif., a statewide proposition (#209) on the issue qualified for the November '96 election.

In mid April, the 5th Circuit issued a 30 day stay of its ruling, which would remain in effect at least until the USS Ct. decided to hear it. (The USS Ct. declined to hear the case in early July). The stay was apparently based on the midstream impact on admissions decisions of implementing the court ruling. UT, TX A&M & Rice, among others, immediately reverted to its past admissions practices.

In May, USDOE OCR counsel advised that the Georgia AG's opinion referenced above was premature, pointing out that Baake is still good law until Hopwood reaches the USS Ct. (Baake upheld the use of race as one factor in achieving diversity in a student body). And USDOE pointed out that under Fordice, the 19 states that once had segregated C&U systems still have a duty to eliminate traces of the de jure system of seg. Georgia AG countered that under a June '95 USS Ct. opinion, race can only be a factor when its use is narrowly tailored, and addresses a compelling government interest.

In early May, Tx urge the USS Ct. to accept juris. of Hopwood. Tx's petition asked the court to 1) reaffirm Baake; 2) clarify importance of Fordice on the 19 states under OCR deseg. orders. 3) set limits on recovery of damages by victims of discrim.

Also in May, two new lawsuits were filed against UT Austin. One involved a white student with a 3.9 GPA who was denied admission to the UT College of Education. Nota Bene: Hopwood authorized reverse discrim. lawsuits, with plaintiffs getting punitive damages from individual school officials!!

By late May, it was clear that some in the c&u community had organized a broad based public relations and legal campaign to keep Hopwood from being affirmed by the USS Ct. More than 40 college presidents and lawyers gathered in an off-the-

record session at Harvard to plan a strategy. Among other groups present - Justice Dept., Urban League, HHS OCR office. Perspective was said to be anti-Hopwood.

In late May, Justice Dept., 9 states and the D.C. govt. filed briefs urging USS Ct. to strike down 5th Circuit's ruling in Hopwood. Justice Dept. brief urged that the rationale of Baake & Fordice be re-invigorated. States filing briefs includes Az., Hawaii, Iowa, Mass., Minn., New Mexico, Okla., W. Va.

In early July, two members of the USS Ct. (Ginsburg, Souter) refused to hear the Hopwood case. USS Ct. rationale - the issue is moot, because UT abandoned the admissions procedure complained off. Hence, there is no genuine case or controversy, and under long standing USS Ct. doctrine, the Ct. could refuse to hear the case. Based on this ruling, Texas A.G. advised all colleges to stop using race in admission or financial aid considerations. Miss. officials said they would continue to award aid based on race, per Fordice and the state deseg. plan.

Many C & U immediately began implementing plans to recruit and admit "educationally disadvantaged" students, regardless of race.

In mid July, the 106 college Calif. C.C. system stopped designating certain courses for ethnic/racial groups. Cal. A. G. said she would advise Cal. colleges to stop using race in admissions. In August, UC system eliminates racial/preference in admissions, and Cal. Gov. Wilson issues executive order denying college loans to undocumented aliens. This implements Prop. 187.

In late Aug., 3rd Cir. held that it was illegal for a school board to use diversity as a rationale to lay off a white teacher while retaining a black teacher with the same qualifications. The decision also awarded the white teacher 144K in back pay. This decision has precedential value in Pa., NJ, Del. And Arizona's public universities took steps to modify its A/A programs.

In Nov., Tex. college administrators/attorneys confer regarding Hopwood. Among issues discussed 1) some instit. violating Hopwood as a test case, (no one volunteered); 2) indemnifying those who violate Hopwood (recall there is Sec. 1983 liability for such); 3) fin. aid plan; 4) fact that Miss/La. - under Fordice - are ignoring Hopwood - while Tx. is not a Fordice state; 5) using non-racial factors in admission; 6) ask OCR to put Tx. under Fordice. C 11/22.

Legality of FSU-LAW Race Based Aid under Hopwood. C9/27. FSU Law hands out as many as 30 fellowships annually worth $14,000 each for black law students -- but FSU law school never practiced reverse discrim. against blacks, because it did not exist until the late 1960's. (FSU Law came into existence after law school at neighboring Fla. A & M U. was abolished.) So what past discrim. is being remedied? Under Hopwood, this aid is suspect.

Prop 209. (Cal.) C 11/22/96. Was voted into effect on November 5, '96. Vote was 4.7M Ayes, 4.0M Nayes. Bans use of race, sex or national origin in making decisions regarding government programs, to include admissions, financial aid, employment. Language of Prop. 209 is said to be the EEO language of the Lyndon Johnson - Hubert Humphrey Civil Rights Act of the 1964. Note - a bill is pending in the Cal. legislature making it a crime (up to 1 year in prison and/or fine up to $1,000) to make public education or employment decisions using a/a principles. Congress is expected to take up "Equal Opportunity Act" legislation which would be a Prop. 209 on the Fed. govt. In 1996, more than 25 state legislatures considered Prop. 209 legislation, and none passed it. Several lawsuits have been filed by both sides, and Dept. of Justice has been asked to intervene. 20 protestors arrested at UC-Riverside. 11/27 - Fed. district judge in San Francisco issues TRO, restraining enforcement of 209, pending a 12/16 plenary hearing. Judge found 209 violative of Fed. equal protection clause, because 209 only speaks to racial or gender preferences, and not to other statutory preferences, to include veterans status, over 45 years of age, disability status. Quare: Does the judge's ruling apply to all of Calif. or only to one Fed. district in Calif.?

Minority Contractors - Ohio State C4/5. OSU practice of preferring minority k'ors on painting contracts was terminated as result of lawsuit filed by non-minority painting contractor, relying on City of Richmond v. Croson, a 1989 USS Ct. decision. Center for Individual Rights in D.C. assisted the plaintiff. (Recall Adarand v. Pena).

Women - VMI C10/4. (U.S. v. Virginia, _____ USS Ct. _____, June, 1996) VMI board votes to admit women, after USS Ct. rules VMI can't deny women admission. Same physical standards, same crew cut hair, and same "rat line" will be followed for women students. In Nov., VMI and Dept. of Justice argue whether VMI transition plan will be supervised by the court.

Affinity Housing - Cornell C10/4. USDOE rules there is no violation of Title VI in having Latino and Af./Am. houses at Cornell. An appeal of this decision to the Secretary of Ed. is under way by the NY Civil Rights Coalition, which opposed race or ethnic based housing. Cornell has majority students in each house.

Limiting Membership by Race - Iowa C5/3. Black Law Student Assoc. adopts a rule requiring all members to be black. Are compelled to move off campus under U. Iowa anti-discrim. policy. Quare - what about recognition?

Spanking - Cal.-Fullerton C4/12. Spanking of black male student by white pol. sci. professor. Student was hit "lightly" once on butt -- student had lowered his trousers voluntarily. Race bias alleged. Case settled for $35K.

Assault Threats - Emory C4/12. White male freshman and black female freshman get into a fight after female pushes belongings of her roommate (male's girlfriend) into a hallway. Male charged criminally with misdemeanor assault. Next day, male is reportedly threatened by 3 black males, who are charged with felonies.

Gringos - New Mex. Highlands U. C5/10. Fliers distributed on campus which states threat to kill president, administrators and faculty. Flier references "gringo pigs" and "mobilization of Mexican Mafia to burn gringo's homes/families."

Wall of Shame - Brown C/5/10. Interracial dating is reported to anger "many black females." Names of black males dating white women said to be listed on a "wall of shame."

U. Puget Sound C5/10. Proposed student group named "Euro-American Student Union." Proposal dropped over allegations of racism.

Wesleyan C5/10. A non black assigned to room in Malcolm X House. Black students protest. Nine students are reassigned.

Michigan C 4/5. "N___ Go Home" written on black law professor's office wall.

Gonzanga C4/5. Hate mail sent to 3 black law students.

8. GAY, LESBIAN, BISEXUAL ISSUES

Numbers (C 4/26). Currently, an estimated 1200 G & L student organizations exist, on 600 campuses, up from 300 in 1990. C 10/11. "More than 340 C & U ban discrim. based on sexual orientation in admissions, housing, employment, etc." . . . (National Gay/Lesbian Task Force).

Opposition (C 4/26). In 1996 legislative activity occurred opposing G & L conferences (Ala. & Iowa); film festivals (Ga.); speaking in high school sex ed. classes, domestic partners (Mich.); centers, (Indiana).

Same Sex Marriage Nine states recently passed laws barring such. 17 states considered, but did not pass, such legislation. Congress weighed in against same sex marriages by passing the Defense of Marriage Act, which states a marriage is the union of a single man and single woman. 12/3 Hawaii circuit court judge rules same sex marriage is legal. 12/4 Hawaii A.G. appeals this decision, staying effect of the trial court ruling for about a year while the appeal is heard.

Evans v. Romer - Colorado C5/31. USS Ct. voided Colo. constit. amend. relative to discrim. against gays and lesbians. 6 justices held the amendment denied equal protection to gay people. Based on Evans, Colo. public colleges adopt a rule that student organizations may not discriminate on the basis of sexual orientation of members. Colo. College Republicans challenge the rule as violation of their freedom of speech and freedom of asso. rights. Held - non discrim. rule sustained, but groups may deny membership to students who espouse a gay rights agenda, and falsely attribute that agenda to the student group.

Higginson v. Iowa State, Iowa, ____F. Supp. _____ 1996. Jury award of 325K to former English prof. at Iowa State. Alleged he had been denied tenure due to anti-gay bias. The $325K was for lost earnings/emot. distress.

9. ADA/504

"Disabled Students in HIE: Admin. & Judicial Enforcement of Disability Law", Adam A. Milani, Journal of C & U Law, Vol. 22, Sp. 1996, #4, 989-1044. A summary of case/regulatory decisions during the last 5 years. An excellent summary - this should be in your library.

"Application of ADA and 504 to Colleges and Universities: . . . Special Issues

Relating to Students," Tucker, Journal of C & U Law, Vol. 23, Summer '96, 1-42. An excellent companion piece to the Milani article above.

Case Western C8/9. Med. school refusal to admit blind student sustained on appeal to Ohio Sup. Ct. Student took her complaint to the Ohio Civil Rights Comm. Case is on Ohio law, not ADA/504.

Mich. St. U. C9/13. NCAA eligibility rules regarding learning disabled students under investigation by Justice Dept. C4/26 - after Justice Dept. issues opinion, NCAA modifies its rules.

10. TORT

Tort Claims Involving Employees and Possible OSHA Violations. C2/25. Incidents reported included death by drowning while cleaning a boiler; failure to train employees in handling hazardous materials ($43K OSHA fine); improper asbestos removal ($12K OSHA fine); death of employee by an auger ($18K OSHA fine). Most are for improper handling of chemicals or other hazardous materials. In 1993, C & U were cited 164 times, and in '94 were cited 158 times.

Balcony Collapse - VPI C5/10. 16 students injured when 2nd story apt. balcony off campus collapses. Two have broken backs.

Scratch But Don't Sniff. (Talbot v. New York Institute of Technology, 639 N.Y.S.2d 135), March, 1996, 1996 WL 110034. College did not stand in loco parentis with regard to students and, thus, owed no duty to supervise students in their dormitory rooms or to instruct them in safe use of rubber cement. Rubber cement was ignited when students used it in a project.

Dorm Security- NSU Va. Pilot 6/7. Norfolk State held to have no duty to change locks or security codes for dorm room where 2 were shot and 1 was killed by former resident of the room. Tort suits sought $10M for wrongful death and for personal injury. "No common law duty to change the locks when the shooter moved out, nor was there any contractual duty to do so, unless NSU knew or had reason to know the attack was imminent." In the criminal trial, the shooter was convicted of murder (1st degree) and was sentenced to 68 years in prison.

Rec. Centers - Ariz C3/1. Senior undergrad collapses while using exercise bike in campus rec. center -- has permanent brain damage -- got a $5M jury award -- claim: staff did not resuscitate.

Statutory Notice - VCU (Halberstam v. Commonwealth, 467 S.E. 2d 783, 1996). Student injured in parking lot. Attorney filed suit on 181st day. Must file notice of claim with state within 180 days. Case dismissed.

11. ALCOHOL/DRUGS/FRATERNITIES

"Planet Testosterone" - The Wonder of Boys, Michael Gurian, G.P., Putman & Sons, 1996. Guriam, a therapist, argues that boys need to be raised differently than girls. Parents report that their boys seem to be from Planet Testosterone. By puberty, boys are processing 5 to 7 surges of testosterone a day. The book argues that boys need contact sports, time in the wilderness, heavy authoritarianism, a need to express aggression and independence, a need to bond in groups, a need for discipline and hierarchy. While girls need a "safe place to relate," boys need a "safe place to perform." Book has been criticized by some feminists.

Profs on Prozac C 11/15/96. MLA Annual Mtg. will include a session with title "Profs on Prozac." Presenter believes use of Prozac is on the rise among profs., and may affect the manner and content of cultural studies which have typically not favored medical solutions for psychological ailments.

Campus Crime Reports: Drug Arrests C 4/26. 6,138 arrests in '94, up 23% from '93!!!

Medical Legalization. Az. & Cal. authorize use of marijuana as a medically supervised/prescribed drug. But, marijuana possession, use and sale are illegal under Fed. law in Az. and Cal. Will we see Fed. prosecutions of cancer patients using marijuana to control chemotherapy induced nausea in Az. and Cal.?

Marijuana Use Up (SYNFAX 10/7/96) 1995 study of youth 12-17 found marijuana use doubled - up from 3% in '92 to 8% in '95 (1.8 million youth).

Drugs and GNP (SYNFAX 10/7/96). The drug trade generates revenue that exceeds the GNP of 150 of the 200 national economies.

Undercover Police - New Mex. St.; Troy St. C5/17. Undercover police investigations lead to a number of drug arrests. N.M. St. - 16 arrests, 11 were students; Troy St. - 26 arrests, 14 students. Sale of marijuana, LSD.

Campus Crime Reports: Alcohol Arrests C 4/26. 15,923 alcohol arrests in '94, up 6% from '93.

Drinking License - Colorado C5/31. Chancellor proposes lowering beer age to 18 if students take course in drinking responsibility. Would get a license to drink. A drunk driving conviction would end one's license to drink.

Riot - U.N. Iowa C10/25. 1,000 students in the streets celebrating football win turns sour after first the street and then the bars are closed. Riot ensues. 33 arrests for overturning cars and throwing bottles, bricks at police.

UCLA C6/14. Three ZBT brothers charged with criminal rape of coed in Palm Springs hotel. Played sexually oriented drinking game -- men undressed her and had sex. Use of "roofie" alleged.

Fall - Bowdoin C4/26. Brother falls off roof 3 stories high during a party. Admin. closes two frat. houses.

Auto Accident - Kappa Sig v. Tootle, Ga. 1966. Ga. App. Ct. held that Kappa Sig had no liability for the death by auto accident of Tootle. Tootle had attended a Kappa Sig party where Tootle drank his own beer.

Hazing - West Va. U. C3/29. Omega Psi Phi expelled from campus for 4 years. 10 members were criminally charged with beating, whipping and sleep deprivation of a freshman. Student suffered some hearing loss.

Hazing - Pitt. C6/14. Fiji suspended for forcing pledge to drink shots of whiskey. AE Pi also suspended. Pitt cancels fall rush and hell week.

Hazing - So.Ala. C6/14. 10 Sigma Chis charged with assault after the 10 stripped a brother who'd become engaged, tied his hands and feet, threw food and garbage at him, and released him only after he kissed his fiance.

Hazing - Pitt C4/19. Kappa Alpha Psi pledges beaten with a paddle during initiation. Five brothers arrested -- charged with agg. assault, reckless endangerment. One student sustained severe kidney damage, and was placed on a dialysis machine.

Hazing - N. Ill. U. (Jones v. N. Ill. U.). 4 frat brothers are suspended for 2 years for hazing. They allege that the hearing officer was biased both in the initial hearing and on appeal, that evidence was improperly received, and that they were denied counsel on appeal. Held - even if hearing officer was biased, the judgement was rendered by a panel both in the initial hearing and on appeal. There is no right to counsel. Univ. failure to follow to the letter all its procedures will not create d/p problems, so long as minimal constitutional due process is met.

Hazing - George Kuh, Pascarella, Wechsler C4/19. "At least one law firm now specializes in fraternity related law suits."

Fire UNC-CH C6/7. Fire at FIJI house kills 5. No sprinkler system in 70 year old house. 8 fire code violations within 6 months of fire. Other recent frat. house fires: Mich., Iowa, Bloomsburg (5 deaths).

Fire - LSU, Ga. Fire marshal shuts down 4 houses at LSU, each had 20 fire code violations; U. Ga. - 4 houses have more than 20 violations each. C6/28. Ga. closes 6 houses, after fire breaks out in Sigma Nu house cited for 85 fire code violations in Ap. '96.

Ill. State C10/25. Arson probe in fire destroying the Phi Sigma Kappa house.

12. PROTESTS

Tactical Unit - CUNY C6/21. CUNY has special police group (33 members) formed to deal with crowd control and demonstrations. Union representing security guards claims the police group is unlawfully videotaping demonstrations; other intelligence gathering. Matter became public when Newsday reported the police unit had weapons in its van when it went to York College to handle crowd gathered for Black Solidarity Day. CUNY has 19 colleges.

Prop. 209 - Cal. St. - Northridge C10/4. 100 af/action advocates protest speech by

David Duke. 6 are arrested. Part of Prop 209 activity.

Prop 209 Protest - Internet (11/14/96) (My daughter, a 2nd year student at Virginia, E-mailed this to me two days after Prop 209 passed. It apparently is an account of a Prop 209 protest at Berkeley on the Wednesday following the vote.) Wednesday I woke up innocently enough. Slept through my psychology class and then met my friend Susana for lunch on Sproul Plaza (center of campus the place in The Graduate!) There was a rally going on outside on the steps of Sproul Hall (it was noontime) in protest of the passage of Prop 209. So after finishing my grilled cheese sandwich and after she finished her cheese sandwich we walked on over to have a listen in. Within a little awhile, the rally organizers announced that there were going to be a march. A MARCH! Through the streets of Berkeley! And they wanted everyone to go along. And about 400 people including Susana and I, did. And we marched for two hours. Demonstrating, protesting, stopped traffic, yelling, chanting, screaming, singing. There was so much energy. I have never felt like I did yesterday. It was amazing. There were hundreds, for two hours, walking down streets, through neighborhoods, yelling things like: "Fuck 209," "187, CCRI, kiss that racist shit goodbye," "Racist, sexist, anti-gay, Pete Wilson go away." "Fuck the Daily Cal." (The conservative school newspaper who endorsed prop 209.) "Si se Puede." "Pete Wilson you're a liar, we're going to set your ass on fire." (That was rough but heartfelt.) "Walkout, walkout, walkout." (This was when we marched by Berkeley High School and Junior High, remembering the effect of the high school walkers when prop 187 was the big issue.) "Out of the office, and into the streets," (when we passed the business district.) "Whose university? Our university!" "No justice, No peace." "What do we want? Justice when do we want it NOW." "The people united, will never be divided." (In English and Spanish; lots of Latinos in the crowd.) "Sexist fascists go away," racist fascists go away." It was amazing. All this energy. All these people who felt so passionate about what they were protesting. There were all these people in the crowd who I knew and they, we, were all shouting out at the top of our lungs. The whole while the Berkeley police was everywhere with a big paddy wagon following the back of the pack. Well after two hours of marching, never shutting up or slowing down (except to sit down at major intersections disrupting the daily lives of the Berkeley-ites: the idea was "Let's piss the people of Berkeley off, so they'll know how pissed off we are!) The entire group, which had picked up quite a lot of people along the way, and headed back to campus right up Telegraph Ave. As we got closer and closer to campus the energy intensified, we entered campus, through Sproul Plaza past

Wheeler Hall, up this hill, and then all of a sudden the people were marching in front started sprinting as fast as they could towards Campanile. That's this huge tower with a clock that is like THE symbol of the university. (It's probably on the postcards I sent to some of you.) And less than a few minutes later you could see people at the tip of the ivory tower unrolling huge banners down the side of it. One said REVOLUTION, and the other had a huge fist. Eight people made it up to the top and occupied the Campanile and chained themselves to the walls. Downstairs there was a human barricade in front of the elevators, in front of the entrance, and around the Campanile there were hundreds of students who sat down and blocked the way as dozens of UC police started running towards the commotion. Everyone started yelling "No violence, no violence" as the police got closer. Not too long afterwards one of the organizers got everyone to be quiet and announced the demands of the people occupying Campanile. They were going to stay and go on a fast until their demands were met. The students demanded that the University ignore the passage of Prop 209 and continue its affirmative action policies. They demanded that the University keep all the outreach programs and not get rid of the ethnic and women's studies departments. They demanded that the students have say in who becomes the next chancellor of Cal. (Chancellor Tien is leaving in a year). They demanded that more students get on the UC Regent board with an actual vote. They demanded that the University recognize the Graduate Students Union (if you're at UCI or UCLA you'll know that this is a big issue and that the GSIs are going on strike at all three schools in two weeks). They demanded that the Regents not raise fees without asking the consent of the students first. They demanded all that and then some more which I unfortunately do not remember exactly. And then the vigil started.

Through the night about 50 people refused to move from in front of the entrance, blocking the way from the cops, protecting the people upstairs who were risking so much. I hung out listening to people talk and give speeches until about 5:00 p.m., ran to Jeremy's dorm to tell him about it. About an hour later we headed back. Now there were police everywhere on campus, you could see the fist and revolution banner from miles around. The people at the top were ringing bells like wild. Down on the ground the feeling was that this was no longer just about Prop 209. It was the campus and university that the students (and Jeremy and I at one point who were right there in the middle of things) were trying to protect. When someone yelled out "What University?!!" every single one of us knew that it was "Our University" and that the police could not stop us, the students, from taking over

"Our University!" People were talking about trying to take over Cal. or Sproul Hall on Wednesday. Trying to shut down campus perhaps. Then around 6:30 it looked like the cops were going to try to break it all up. The news cameras were pretty much gone, except for the press that was left upstairs interviewing the people at the top. So some guys who seemed to be seasoned at this sort of thing started giving everyone tips on civil disobedience and getting arrested. Link arms. Do not resist. Make sure you have ID. Know the name and number of the person next to you. If cops hurt you unnecessarily call CopWatch. Here's the number of legal advocates if you need one. If you get arrested you will probably be released within a few hours. The police were everywhere and the people who were linked together, barricading the entrance were nervous but extremely brave. We left a while later. Things had calmed down for the meanwhile and didn't look like cops were going to make any moves anytime soon. Early this morning news broke out that the cops had come in 2 or 3 a.m. and broken it all up, arresting 23 people and taking the people and banners at the top back down. The Campanile was back to "normal." But throughout the day, people were marching all through campus. Students did in fact take over one building, sitting in the halls, stopping all "business as usual." And it is my firm belief that this is not about to stop. The campus is really tense in my opinion. A news report said that "Things were back to usual, as Cal students went to class and hit the books." That's not completely true. There's a lot of sentiment around here. A strong will I think to not give up too soon despite the immediate setbacks and obstacles. There's lot of shit going on right with Prop 209, the Chancellor, the Regents, the grad students' union and efforts, the university taking over the ASUC store, the raising of fees, the cutting of departments. I guess what all this means is that things are going to get crazy soon. Maybe not tomorrow, or next week, but soon. I think that the mood of country and the state is moving to the right too fast, and it's going to come to a screeching halt, and no one is going to know what to do. I think it will be students who start the ball rolling just like they have in the past. Historically, the United States has gone through a social revolution every 30-40 years. If anyone hasn't noticed, it's about time for another one. I guess the one thing that is very different about the 60s compared to now, is that ethnically the people out there protesting aren't polarizing themselves. There were every color and denomination represented yesterday. This is truly multicultural and I think that it's the strength of diversity that will give people power. There were a lot of Latinos in the crowd yesterday. I think what this means is that after years of sitting back putting up with abuses and discrimination, the Latino population of the state is getting themselves educated, standing up and saying "Stop!" Certainly

something long overdue, but desperately needed in order to stop the scapegoating mood of the state politicians, the governor, and so many people. So I don't know what is going to happen tomorrow on campus. Hopefully something. This is about more than 209. I don't know if I can put it in words, maybe you can. I really thought it was important for the people I know to read this. The news coverage up here in the Bay area hasn't been quite as comprehensive as I would have hoped. And after talking to my Dad last night, it doesn't seem like too much is being said elsewhere. No matter what you're feelings about 209 or the election are, know that something is going on. People are not okay with what is happening in this state or at this university. Here at Berkeley there is a very vocal group speaking out. Tell others, make them care. Like I said it's about more than 209. It's about the economy, the poverty, the sexism, the racist, the injustices, the prejudice, the hypocrisy. We're on the brink of another revolution. Our history and our present situation dictate it to be so, and as college students, we're going to be right smack in the middle of it. Forward this to someone who'd want to read this, who needs to read this. I say we start that revolution today. Love, Abby.

Use of Internet For Political Argument Regarding Prop 209. 11/14/96. (List allegedly was prepared by a California Legislative Analyst). "Counseling and recruiting programs designed to assist minority youth in applying to college will be eliminated. "Girls Math" programs designed to counteract sex discrimination against girls by helping middle school and high school girls remain competitive in math and science will be eliminated. Counseling, outreach and recruiting programs designed to counteract discrimination in government employment by encouraging minority group members to apply for government employment and promotions will be eliminated. Women/minority business programs designed to help counteract discrimination in government contracting by giving special assistance and consideration to women/minority owned business will be eliminated. Magnet schools designed to desegregate school districts will probably be eliminated. Women's studies and ethnic studies programs/classes at state colleges/universities may be eliminated. The California constitution will be amended to make it legal to discriminate against women in state employment, contracting and education when "reasonably necessary." "

Budget - D.C. C3/29. Hundreds of students at UDC protest budget cuts by staging 14 hour sit in in streets, eventually blocking evening rush hour traffic on Conn. Ave.

Anti-Semitism - UNC-CH C4/5. Anti-Jewish messages in library books.

Ethnic Studies - Columbia C4/12. Hunger strike over issue of an ethnic studies dept.; occupy main admin. bldg.

Maintenance Workers - Yale C4/19. 31 students arrested in sit in in pres. office. Issue - maintenance workers strike. Stanford C5/10. Labor dispute between janitors and cleaning contractor.

Animal Research - Cal.Berkely C5/10. Use of animals in research.

Dartmouth C2/16. 400 students rally. Issue is spray painting "chink" on the dorm room door of two Asian-Americans.

Savannah State C5/31. 100 students occupy admin. bldg. with 500 involved in protest. Issues - dorm conditions, software, Afro./Am. studies program, 24 hour health care. Occupation ends after 16 days, and appointment of committees to investigate.